

Federal and state laws hold election officials and voters accountable for their actions and provide procedures for enforcing accountability. This chapter describes registration and election-related offenses and procedures for reporting violations and handling complaints. It is organized according to the setting in which the violation or complaint may arise—registration sites, the registration process, balloting and ballots, polling places, absentee voting, campaigning, and others.

### 23.1 How to Handle a Violation or Complaint: Gather Facts to Evaluate Severity and Determine Appropriate Response

One of the most important responsibilities of state and local election officials is responding to complaints alleging illegal conduct and violations of civil rights. States have primary responsibility and local election officials are the front line of enforcement to protect voting rights and prevent fraud. [US Const. Art. I](#). The first step in an effective response is gathering the facts necessary to evaluate the severity of the violation and the options for response. The Incident Report Form discussed in Chapter 27 provides a good tool for gathering facts. Facts indicating a willful violation should be referred for further investigation for possible prosecution to the local Commonwealth's attorney and United States Attorney if federally related. Election officials should report for prosecution willful misconduct they observe or discover and refer third party complaints to the appropriate prosecutor(s) for action.

An election official who has a reasonable basis for suspecting violation of state election laws should report the alleged violation to the [Commonwealth's Attorney](#) in the locality in which the violation allegedly occurred. ([§ 24.2-1019](#)).<sup>1</sup> A Commonwealth's Attorney or any member of an electoral board may request the Attorney General to investigate substantial election law violations. ([§ 24.2-104](#).) Suspected violation of federal law should be reported to the appropriate United States Attorney for the geographical area ([Eastern or Western District](#)) or to the United States [Department of Justice Voting Rights Section](#). Reporting an alleged violation to the appropriate law enforcement authorities does not require that an official have facts establishing a violation, but there should be some objective, verifiable basis for any report that might result in an arrest, indictment or serve as the basis for a contest or other action disputing an election. Normally, the person witnessing an alleged violation should be the person who reports it. However, in many cases concerning Election Day violations at the polls, the registrar or electoral board will report the violation based on statements from an officer of election that saw what happened. In such cases, the officer of election or other person who saw the alleged

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<sup>1</sup> Violations involving alleged false statements on applications are deemed to occur in the locality where the applicant *sought to be registered*. ([§ 24.2-1019](#)).

violation should be prepared to document the specifics of the violation and to testify in court if needed.

Both federal and state laws may apply to prohibit the same conduct. For example, federal and state laws generally prohibit voting more than once in the same election. (§[24.2-1004](#), [42 USC 1973i](#) (e)). The appropriate law enforcement authorities determine whether the facts reported by an election official or private individual or group warrant prosecution or should be handled by state and local officials using civil measures such as petitioning for removal of a local official.

In any case SBE determines the public interest will be served, SBE requests the Attorney General or other counsel appointed by the Governor to assist a local Commonwealth's Attorney. (§ [24.2-104](#)). Questions about federal offenses should be directed to the appropriate United States Attorney for the geographical area (Eastern or Western District) or to the United States Department of Justice Voting Rights [District](#). Questions about state offenses should be directed to the local [Commonwealth's Attorney](#). SBE may not give legal advice, comment or disclose information about possible prosecutions of election law offenses. (§ [2.2-3706](#)). SBE refers suspected violations to the appropriate Commonwealth's attorney and may request assistance from the Attorney General if SBE determines the public interest will be served. (§ [24.2-104](#), §[24.2-1019](#)).

## 23.2 Complaints

### Formal

As required by the Help America Vote Act (HAVA), Virginia has a formal complaint procedure for Election Day complaints which requires filing a notarized statement within 10 days after the incident occurs. Formal complaints are investigated by the Deputy Secretary level who must respond within 30 days. Normally the GR will be contacted for information and allowed an opportunity to review the proposed response.

### Informal

SBE invites informal complaints by telephone or email. Complaints are assigned to the appropriate staff member for resolution as expeditiously as possible. Often a call to the GR is all that is needed to clear up a misunderstanding. Sometimes complaints allege facts indicating a criminal violation. Generally the complainant should be referred to the local Commonwealth's attorney and/or the US Attorney if federal law is involved. Election officials also have a responsibility independently to report allegations of serious offenses to assure that appropriate enforcement action is taken.

## 23.3 Election Related Criminal Offenses

Many election offenses involving fraud and willful misstatements are felonies punishable by more than a year in prison and large fines. Less serious offenses involving disruptive

conduct and disobedience are misdemeanors punishable by up to 12 months in jail and less severe fines. Many campaign finance related violations are viewed as civil rather than criminal in nature similar to the classifications used for traffic infractions.

- Violations for which no penalty is specified are Class 1 misdemeanors. § [24.2-1017](#).
- **Conspiracies** to deny rights protected under Title 24.2 including federally protected rights, whether involving public or private parties, are punishable as felonies under federal and state laws and should be reported to state and local election officials and to federal and state law enforcement. (§ [24.2-1016](#); [18 USC 241](#)).

Election offenses fall into three broad categories: official misconduct, fraud or interference with the registration or election process, and campaign finance related violations. Relevant federal and state law provisions in each area are summarized in the tables below; the same conduct can violate multiple laws for prosecutors to consider:

### 23.3.1 Official Misconduct

Nature of Offense	Penalty	Statute	Procedure
Willful neglect of official duty	Misdemeanor	§ 24.2-1001	Report to SBE and CA
Corrupt conduct in executing duties.	Felony	§ 24.2-1001	Report to SBE and CA
Impede UOCAVA voter	Felony	18 USC 608	Report to SBE and AUSA
Aid illegal absentee voting	Permanently lose right to vote	§ 24.2-1012	Report to SBE and CA
Refuse to allow or count vote as part of conspiracy	Felony	42 USC 1973i (a), 1973 (j)	Report to SBE and AUSA
Intimidate, threaten or coerce persons attempting to vote or federal enforcement officials	Felony	42 USC 1973i(c)	Report to SBE and AUSA
Interfere with federal nominations or elections	Misdemeanor	18 USC 595	Report to AUSA
Violate civil rights	Civil	42 USC 1983	Report to chief legal officer
Conceal or misrepresent facts	Felony	18 USC 1001	Report to SBE and AUSA
Misuse public assets	Felony	18.2-112.1	Report to SBE and CA
False official certification		18 USC 1018	Report to SBE and CA
False claims for federal funds	Felony	31 USC 3729	Report to SBE

False claims for state funds	Civil damages	8.01-216.1 et seq.	and AUSA
Misprision of felony (concealment or non-disclosure of someone else's felony)	Felony	18.2-462, 18 USC 4	Report to SBE, CA and AUSA

To access the Code of Virginia, click [here](#) and enter the code section.

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### 23.3.2 Offenses Related to Voter Registration

Nature of offense	Penalty	Statute	Procedure
Incentives to register to vote	Felony	42 USC 1973i(c)	Report/refer to AUSA
Duplicate registration	Misdemeanor	24.2-1004	Report/refer to CA
Willful false material information or alteration	Felony	24.2-1009, 24.2-1002.01, 24.2-1016; 42 USC 1973i (c)	Report/refer to CA and AUSA
Solicit multiple registration	Felony	§ 24.2-1002	Report/refer to CA
Registration by noncitizen	Felony	18 USC 1015(f), 3571	Report/refer to AUSA
Interfere by force or threats	Misdemeanor	§ 24.2-1002	Report/Refer to CA
Fail to mail or deliver application on time	Misdemeanor	§ 24.2-1002.01	Report/Refer to CA
Fail to provide required application receipt (private drives)	Misdemeanor	24.2-418.1, 24.2-1017	Report/Refer to CA
Campaigning at officially sponsored voter registration	Misdemeanor	24.2-1003	Report/Refer to CA
Unauthorized collection and disclosure of applicant SSNs or other personal information	Felony	18.2-186.3, 24.2-1002.1	Report/Refer to CA
Incentives to register to vote	Felony	42 USC 1973i (c)	Report/refer to CA

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## **Offenses related to Voting**

<b>Nature of Offense</b>	<b>Penalty</b>	<b>Statute</b>	<b>Procedure</b>
Illegal voting such as voting twice	Felony	24.2-1004, 42 USC 1973i(e)	Report to CA and AUSA if federal election
Aid or encourage illegal voting	Misdemeanor	24.2-1004	Report to CA
Bribe, interfere, insult or abuse officer of election	Misdemeanor	24.2-607, 24.2-1000	Report to CA
Voting by alien	Felony	18 USC 611	Report to AUSA
Interfere with voting or party nominating process	Misdemeanor	24.2-1005 18 USC 594	Report to CA and AUSA if federal election
Give false directions/information to voter	Misdemeanor	24.2-1005.1	Report to CA
Hinder, intimidate or interfere with qualified voter secret ballot, disrupt orderly conduct of election	Misdemeanor	24.2-604, 24.2-607	Officers of election may order immediate arrest and 24-hour confinement
Offer ballot to person known unable to understand to deceive	Misdemeanor	24.2-1005	Report/refer to CA
Hinder or delay access or exit from polls	Misdemeanor	24.2-604	Report/refer to CA
Campaign or influence within prohibited area <sup>2</sup>	Misdemeanor	24.2-604, 24.2-1006	Request stop and report to CA
Unauthorized use of loudspeaker within 300 feet of polling place on Election Day	Misdemeanor	24.2-605	Report to CA
Interfere, coerce AB voter	Felony	24.2-1012	Report to CA
Change vote against voter intent	Misdemeanor	24.2-1005	Report to CA
Incentives to vote in federal elections	Felony	42 USC 1973i (c)	Report to AUSA
Buying/selling votes state and local elections	Misdemeanor	24.2-1007	Report/refer to CA
Carry away own ballot	Misdemeanor	24.2-1011	Report/refer to CA
Counterfeiting or tampering with ballots, software, equipment, keys	Felony	24.2-1008, -1009, -1110	Report/refer to CA

<sup>2</sup> 2009 legislation clarifies that the law should not be interpreted to prohibit a voter from wearing “a shirt, hat, or other apparel on which a candidate's name or a political slogan appears or from having a sticker or button attached to his apparel on which a candidate's name or a political slogan appears.”

Offenses related to Voting (continued)

Vote unauthorized ballot not provided by officer of election	Misdemeanor	24.2-1011	Report to CA
Wrongfully deposit a ballot or cast a vote on voting equipment	Misdemeanor	§ 24.2-1004 (A)	Report to CA
Unauthorized possession of voting equipment key or activation device	Misdemeanor	§ 24.2-1010	Report to CA
Intentionally vote or aid another to vote with knowledge not qualified when and where ballot cast	Felony	§ 24.2-1002 (B).	Report to CA

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❶ **Facilitating voting: benefits that help people vote like a postage stamp for an absentee ballot or a ride to the polls are not considered illegal bribes or inducements according to the [FBI website](#).**

❶ Loitering within the prohibited area is probably the most frequent source of complaints. ([§ 24.2-604](#)). Immediate arrests for violations of this law are uncommon. Typically, violators are overeager campaign volunteers or candidates with a tendency to forget where the 40-foot boundary is or the limits of the provision for candidate voting and 10 minute visits. ([§ 24.2-604 \(f\)](#)). Usually, officers of election warn such violators before taking legal action. If a violator repeatedly refuses to heed such a warning, then arrest may be warranted.

Suggestion: Officers of election may show the violator the specific wording of [§ 24.2-604](#), or they may point out the language of this Code section on the “Prohibited Area” signs that they post outside the polling place.

❶ Offenses relating to assisting voters: Any voter who needs assistance in preparing his ballot because of a physical disability or inability to read or write (including those with limited English proficiency) can request such assistance. The assister (who can be an officer of election) must cast the ballot for the voter only – and completely – according to the direction of that voter. The assistant cannot in any way influence the decision of the voter. (If the voter is not capable of *understanding* what he is doing, and cannot *direct* how his vote is cast, the matter should be referred to the Commonwealth's Attorney for possible prosecution of the person rendering improper assistance, whether or not an assistance form was completed. It is not unusual to hear of voters residing in nursing homes,

or suffering from long-term mentally debilitating illnesses, "being voted" by family members and staff. Even if the assistant says, "I know how he/she would want to vote," if the voter could not actually *direct* how his/her vote was cast, improper assistance has been rendered and the matter must be referred to the Commonwealth's Attorney). Finally, the assistant cannot divulge how the person voted. Violation of any of these laws related to assistance is punishable as a Class 1 misdemeanor ([§ 24.2-649](#)), and may be a Class 5 felony if related to absentee voting or fraudulent. ([§ 24.2-1012](#) and [§24.2-1016](#)).

### 23.3.3 Campaign Related Offenses: Reporting and Advertising

#### Virginia

As discussed in detail in Chapter 21, Virginia does not generally prohibit any properly reported contribution, except contributions during regular legislative sessions prohibited under [§ 24.2-954](#). This statute provides for enforcement by Commonwealth's Attorneys of a civil penalty of the greater of \$500 or the amount of the contribution. Other Virginia campaign finance related laws (registration and reporting, advertising and telephone solicitation) are subject to both civil penalties and criminal prosecution. Willful campaign finance and advertising related violations generally are misdemeanors but filing a willfully false material statement is a felony whereas campaign advertising related violations are misdemeanors. ([§§ 24.2-953, 24.2-955.3, 24.2-1016](#)). Civil penalties may be imposed by local electoral boards as to local filings or the State Board of Elections (which has delegated some responsibilities to the Secretary). ([§§ 24.2-946.3, 24.2-953, 24.2-955.3](#)). Commonwealth's attorneys are responsible for prosecuting criminal violations and may also be requested to enforce collection of unpaid civil penalties. ([§§ 24.2-946.3, 24.2-955.3, 24.2-1019](#)). The Board may also request the Attorney General to provide assistance. ([§ 24.2-104](#)). The State Board will defer to criminal investigation of a matter and impose civil penalties upon a determination no knowing or willful violation occurred. The State Board or any member of its staff, local election officials, and any member of the public may report an alleged violation of any provision of Title 24.2 to the Commonwealth's attorney. ([§24.2-1019](#)).

Nature of Offense	Penalty	Statute	Procedure*
Failure to file, incomplete or late report/statement	Misdemeanor if willful and/or civil penalties ranging from \$100 to \$1,000	24.2-953 et seq.	GREB assess local SBE assess state Mandatory report to CA
Fail to correct incomplete after 10 days notice and any extension allowed up to 2 weeks for good cause	Civil penalty of \$500	24.2-955.3	GREB assess local SBE assess state Mandatory report to CA
Material false statement	Felony	24.2-1016	Report to CA

Sponsor omit disclaimer required in media (e.g. print, TV, radio, telephone)	Misdemeanor if willful. Civil penalties increase closer to election from \$1,000 to \$2,500	24.2-955.3	Report suspected willful to CA and assess civil penalties
Sponsor omit disclaimer required for campaign telephone call	Misdemeanor if willful or \$2,500 civil penalty	24.2-959	Report suspected willful to CA and assess civil penalties
Publisher omit required notice “paid advertisement”	Misdemeanor if willful or \$50 civil penalty.	24.2-955.2	Report suspected willful to CA and assess civil penalties
Post sign within highway limits	\$100 civil penalty plus removal costs	33.1-373	Report to VDOT
Post sign next to right-of-way	<a href="#">VDOT regulations</a>	33.1-351 et seq.	Report to VDOT
State legislator receive contribution during session	Civil penalty	24.2-954	Report to CA
Bribery of officials	Felony	18.2-438, -439, -447	Report to CA
Contributions from aliens	Felony	2 USC 441e	Report to AUSA

\*Collection of civil penalties is subject to statute of limitations that expires the earlier of 1 year after discovery or 3 years after violation.

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**❗ Waivers:** No election official or staff may waive civil penalties; a request for waiver must be presented to the appropriate board assessing the penalty. [§ 24.2-946.3](#). Filing deadlines may be extended on limited grounds provided in [24.2-946.4](#).

### **❗ Campaign signs**

Local election officials often receive complaints about the placement of campaign signs that present issues outside election law. Localities may apply nondiscriminatory ordinances to campaign yard signs. ([§ 15.2-109](#)).



Enforcement of those ordinances is a local government responsibility. DMV also regulates placement of signs. Election officials should inform persons alleging illegal placement of campaign signs to contact the local government attorney or administrator or if within the limits of public highways, to the local DMV office. See Chapter 21 for a discussion of disclaimer issues.

**i Campaign telephone calls** are not covered by the federal or state “Do Not Call” laws and lists. Voters may ask political parties and committees voluntarily to remove the voter’s name from their contact lists. Disclaimers are not required for telephone surveys that do not meet the definitional criteria in [§ 24.2-955.1](#) (25 or more Virginia numbers called, within 120 days before election or 90 days before primary or other nominating event, solicit or convey information for participating candidate or political party, compensated).

### Federal

Federal regulation of campaign finance and advertising is more complex, with enforcement responsibility shared by the Federal Elections Commission and the US Department of Justice. Electioneering communications must have disclaimers. The Federal Election Campaign Act (FECA), 2 USC 431-455 provides civil and criminal penalties for making prohibited contributions. Under 2 USC § 437g, the FEC on complaint may undertake a confidential investigation resulting in a conciliation agreement that can be cited in mitigation in the event of criminal prosecution by the Attorney General. (2 USC 447g(d)(2)). Civil penalties that may be imposed in the conciliation process range from \$5,000 to 300% of the amount involved. The FEC may also bring civil enforcement actions. The civil enforcement procedure is not a bar to direct criminal prosecution by the Attorney General. *United States v. Orkin Exterminating Co.*, 688 F. Supp. 223 (W.D.Va. 1988). The FEC may also refer a matter to the Attorney General on finding probable cause of a knowing and willful violation. (2 USC 437g (a) (5) (C) and (c)). An affirmative vote of 4 members is required to take actions under the civil enforcement procedure.